

No. 23-15199

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**SAFARI CLUB INTERNATIONAL, ET  
AL.,**

Plaintiffs-Appellants,

v.

**ROB BONTA, in his Official Capacity as  
Attorney General of the State of California,**

Defendant-Appellee.

On Appeal from the United States District Court  
for the Eastern District of California

No. 2:22-cv-01395-DAD-JDP  
Hon. Dale A. Drozd, Judge

**DEFENDANT-APPELLEE’S MOTION FOR EXTENSION OF  
TIME TO FILE PETITION FOR PANEL REHEARING  
OR REHEARING EN BANC**

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**MOTION FOR EXTENSION OF TIME TO FILE  
PETITION FOR PANEL REHEARING OR REHEARING EN BANC**

Pursuant to Ninth Circuit Rule 31-2.2, Defendant-Appellee Attorney General Rob Bonta respectfully submits this motion for an extension of time of 45 days in which to file a petition for panel rehearing or rehearing en banc in this appeal, up to and including November 20, 2023. The requested extension will allow Attorney General Bonta sufficient time to consider whether to file a petition for panel rehearing or rehearing en banc in this significant case, and will better align the deadline for filing any petition in this case with the deadline to file a petition in the related case, *Junior Sports Magazines v. Bonta* (9th Cir. No. 22-56090) (“*Junior Sports Magazines*”), in which this Court granted a similar request for an extension of time of 45 days to file a petition (until November 13, 2023). Attorney General Bonta has not previously requested an extension of time to file a petition in this appeal. As further set forth below and in the attached declaration, there is a substantial need and good cause for the extension. Plaintiffs-Appellants do not oppose Attorney General Bonta’s request for additional time.

This case involves a constitutional challenge to California Business and Professions Code section 22949.80 (“Section 22949.80”), which prohibits the advertising and marketing of firearms in a manner that is designed,

intended, or reasonably appears to be attractive to minors. This appeal was heard on the same date and by the same panel as an appeal of the denial of a preliminary injunction in *Junior Sports Magazines*, a challenge to Section 22949.80 on similar grounds.

On September 13, 2023, the panel filed a published opinion in *Junior Sports Magazines*. *Junior Sports Magazines Inc. v. Bonta*, -- F.4th --, No. 22-56090, 2023 WL 5945879 (9th Cir. Sep. 13, 2023). The panel reversed the district court's decision, which had denied the Plaintiffs-Appellants' motion for a preliminary injunction, and remanded the case for further proceedings. *Id.* at \*8. The panel concluded that the Plaintiffs-Appellants in that case are likely to succeed on the merits of their First Amendment claim and that the remaining preliminary injunction factors weighed in the Plaintiffs-Appellants' favor. *Id.* \*3-8.

Attorney General Bonta thereafter filed in *Junior Sports Magazines* a motion requesting a 45-day extension of time to file a petition for panel rehearing or rehearing en banc. No. 22-56090, Dkt 40 (Sept. 20, 2023). On September 22, 2023, this Court granted that motion and extended the Attorney General's deadline 45 days to November 13, 2023. No. 22-56090, Dkt 43 (22, 2023).

Also on September 22, 2023, the panel filed an unpublished memorandum in the instant case. *Safari Club Int'l v. Bonta*, --- F.4th ---, No. 23-15199, 2023 WL 23-15199 (9th Cir. Sep. 22, 2023). “For the reasons outlined in *Junior Sports Magazine*,” the panel reversed the district court’s decision, which had denied Plaintiffs-Appellants’ motion for a preliminary injunction, and remanded the case for further proceedings. *Id.* at \*1.

In this appeal, the current deadline to seek panel rehearing or rehearing en banc is October 6, 2023. *See* Fed. R. App. P. 40(a)(1) and 35(c). The Court may extend that due date for good cause, including a showing of diligence and substantial need. *See* 9th Cir. R. 31-2.2(b); *see also* Fed. R. App. P. 26(b), 40(a)(1).

As set forth below and in the accompanying declaration, and as was also described in the request for additional time in *Junior Sports Magazines*, Defendants-Appellees are carefully analyzing the panel’s decision to determine whether the filing of a petition for panel rehearing or rehearing en banc in this case is warranted. *See* Fed. R. App. P. 35(a)(1), (b)(1)(A). This case, like *Junior Sports Magazines*, involves important questions of constitutional law, including the construction and application of the intermediate-scrutiny standard to the regulation of commercial speech. The decision on whether to file a petition for rehearing requires careful

deliberation and consultation among multiple sections within the California Attorney General's Office, as well as multiple levels of internal approval. Decl. of Gabrielle Boutin at ¶ 3. The requested extension of time accounts for both the internal approval process and for the future work involved in preparing and finalizing a petition for panel rehearing or rehearing en banc, which must also undergo a very detailed review and approval process, if the Attorney General's Office decides to file a petition. *Id.* The requested extension will also ensure that any filed petition presents the issues in a way that is most helpful to the Court. Finally, and importantly, the requested extension would better align the timing for the Attorney General to file any petition for rehearing in this case with the November 13, 2023 deadline to file any petition in the related *Junior Sports Magazines* case. That will allow the Attorney General to analyze the two matters in tandem to determine whether the filing of a petition is warranted and, if necessary, to prepare and file any petition(s).

In conclusion, based on the foregoing, Attorney General Bonta respectfully requests a 45-day extension until November 20, 2023 to consider and, if necessary, prepare and file such petition in this action. *Id.* at ¶ 4.

Dated: September 29, 2023

Respectfully submitted,

ROB BONTA

Attorney General of California

THOMAS S. PATTERSON

Senior Assistant Attorney General

ANTHONY R. HAKL

Supervising Deputy Attorney General

*/s/ Gabrielle D. Boutin*

GABRIELLE D. BOUTIN

Deputy Attorney General

*Attorneys for Defendant-Appellee Attorney*

*General Rob Bonta*

**DECLARATION OF GABRIELLE BOUTIN IN SUPPORT OF  
MOTION FOR EXTENSION OF TIME**

I, Gabrielle Boutin, declare:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am employed as a Deputy Attorney General by the California Department of Justice, Office of the Attorney General. I am an attorney of record for Defendant-Appellee Rob Bonta and have personal knowledge of the matters stated herein.

2. This Court published its opinion in this case on September 22, 2023. *Safari Club Int'l v. Bonta*, -- F.4th ---, No. 23-15199, 2023 WL 23-15199 (9th Cir. Sep. 22, 2023). Defendants-Appellees and their counsel are considering whether to file a petition for panel rehearing or rehearing en banc.

3. The current deadline to file a petition is October 6, 2023. Defendants-Appellees request a 45-day extension of time to consider and, if necessary, file a petition for panel rehearing or rehearing en banc, until November 20, 2023. The requested extension accounts for both the review and approval process for the decision to file a petition and the work involved in preparing and finalizing a petition for rehearing en banc, which also must undergo a very detailed review and approval process. An extension is necessary because assessing whether to seek further review requires a careful and in-depth process involving multiple

components of the Office of the Attorney General, including its Office of the Solicitor General. Additionally, the requested extension will more closely align the deadline to file any petition for rehearing in this case with the related case, *Junior Sports Magazine v. Bonta*, No. 22-56090 (9th Cir.), in which the Court granted a 45-day extension of time to file any petition, until November 13, 2023.

4. A 45-day extension of time will allow sufficient time to complete necessary deliberations and prepare a petition, if one is internally approved. A 45-day extension would result in a new deadline to file the petition of November 20, 2023. On September 27, 2023, I contacted Plaintiffs-Appellants' counsel regarding this Motion, explained I would be requesting an extension of 45 days, and asked whether Plaintiffs-Appellants would oppose that request. Plaintiffs-Appellants' counsel informed me on September 29, 2023, that they do not object to the requested extension.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Davis, California, on September 29, 2023.

/s/ Gabrielle D. Boutin  
Gabrielle D. Boutin



## CERTIFICATE OF SERVICE

Case Name: **So Cal Top Guns, Inc. v. Rob  
Bonta**

No. **23-15199**

I hereby certify that on September 29, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT-APPELLEE'S MOTION FOR EXTENSION OF TIME TO FILE  
PETITION FOR PANEL REHEARING OR REHEARING EN BANC**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 29, 2023, at Sacramento, California.

Eileen A. Ennis

Declarant

*/s/ Eileen A. Ennis*

Signature

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